

Decision Maker: DEVELOPMENT CONTROL COMMITTEE

Date: Thursday 19 November 2020

Decision Type: Non-Urgent Non-Executive Key

Title: PROPOSED NON-IMMEDIATE ARTICLE 4 DIRECTIONS TO REMOVE PERMITTED DEVELOPMENT RIGHTS FOR UPWARDS EXTENSIONS IN SPECIFIED AREAS

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Ward: Bickley; Bromley Common and Keston; Chelsfield and Pratts Bottom; Chislehurst; Clock House; Copers Cope; Hayes and Coney Hall; Kelsey and Eden Park; Petts Wood and Knoll; Shortlands;

1. Reason for report

- 1.1 This report recommends that the Council makes 15 non-immediate Article 4 Directions to withdraw the permitted development (PD) rights which allow blocks of flats to extend upwards by up to two storeys to provide new residential units. These Directions would apply to the 13 Areas of Special Residential Character as shown in the Bromley Local Plan (January 2019); and to two discrete areas which fall within local views. The Directions would come into force at least 12 months after being made, subject to confirmation by the Renewal, Recreation and Housing Portfolio Holder after taking account of representations received.
- 1.2 The areas selected for the Directions are areas which add significant character and distinctiveness, linked to adopted policy in the adopted Local Plan. The Article 4 Directions would help to protect this character and distinctiveness which is a positive benefit for local amenity.

2. RECOMMENDATION(S)

- 2.1 That Members endorse the making of 15 non-immediate Article 4 Directions (covering the areas shown in the plan attached at Appendix 1) to withdraw the following permitted development rights granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the GPDO”), Schedule 2:

- **Part 1, Class AA**
- **Part 20, Class A**
- **Part 20, Class AA**
- **Part 20, Class AB**
- **Part 20, Class AC**
- **Part 20, Class AD**

2.2 That Members note that the Portfolio Holder for Renewal, Recreation and Housing will be asked to authorise the making of 15 non-immediate Directions, and subsequent public consultation for a period of 6 weeks. The Directions will come into force 12 months from the day on which they are made, if they are subsequently confirmed following public consultation. Any confirmation of the Directions will be subject to a future decision.

Impact on Vulnerable Adults and Children

1. Summary of Impact: None
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Corporate Policy

1. Policy Status: N/A
 2. BBB Priority: Vibrant, Thriving Town Centres Regeneration:
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Financial

1. Cost of proposal: No Cost
 2. Ongoing costs: No Cost
 3. Budget head/performance centre: Planning Policy and Strategy
 4. Total current budget for this head: £0.568m
 5. Source of funding: Existing Revenue Budget for 2020/21
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Personnel

1. Number of staff (current and additional): 10fte
 2. If from existing staff resources, number of staff hours: N/A
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Legal

1. Legal Requirement: Article 4 and Schedule 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015
 2. Call-in: Applicable: Further Details – Portfolio Decision
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Procurement

1. Summary of Procurement Implications: None
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): N/A
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No
2. Summary of Ward Councillors comments: N/A

3. COMMENTARY

Background and planning policy context

- 3.1 Six PD rights which allow the upwards extension of residential and mixed-use buildings have been recently introduced through amendments to the GPDO. These are:
- Part 1, Class AA - permits the enlargement of a dwellinghouse by the construction of new storeys on top of the highest existing storey of the dwellinghouse. Two storeys may be added if the existing dwellinghouse is two or more storeys tall, or one additional storey where the dwellinghouse consists of one storey.
 - Part 20, Class A – permits the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats.
 - Part 20, Class AA – permits construction of up to two new storeys of flats on top of detached buildings in commercial or mixed use, including where there is an element of residential use.
 - Part 20, Class AB - permits the construction of new flats on top of terrace buildings (including semi-detached buildings) in commercial or mixed (including residential) use; two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey.
 - Part 20, Class AC - permits the construction of new flats on top of terrace dwellinghouses (including semi-detached houses); two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey.
 - Part 20, Class AD - permits the construction of new flats on top of detached dwellinghouses; two storeys may be added if the existing building is two or more storeys tall, or one additional storey where the building consists of one storey.
- 3.2 There are a number of restrictions imposed on these new PD rights, as well as further considerations relating to how Development Plan policy applies to the assessment of prior approval assessments. Further information on the details of the PD rights are set out in two recent reports to Development Control Committee, the Upwards Extension Permitted Development Rights report¹ which was noted at the meeting held on 14 July 2020; and the Planning Legislation Update report² which was noted at the meeting held on 24 September 2020. At both of these meetings, members asked officers to investigate the potential for Article 4 Directions to remove the new PD rights in certain areas across the Borough.
- 3.3 Article 4 Directions allow authorities to withdraw the PD rights that would otherwise apply by virtue of the GPDO. An Article 4 Direction does not prevent the development to which it applies, but instead requires that planning permission be first obtained from the local planning authority for that development. This gives a local planning authority the opportunity to consider a proposal in more detail, i.e. assessing against policies in the Development Plan. The PD rights in question all require prior approval of certain issues, but this determination is limited and does not allow for full consideration against adopted Development Plan policies.
- 3.4 As set out in the National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG), the use of Article 4 Directions should be limited to situations where they are necessary to protect local amenity and / or the wellbeing of the area. These criteria are not further defined in the NPPF or the PPG. The PPG notes that the potential harm that a Direction is intended to

¹ Available here:

<https://cds.bromley.gov.uk/documents/s50082500/UPWARDS%20EXTENSION%20PERMITTED%20DEVELOPMENT%20RIGHTSPART%201%20REPORT%20TEMPLATE.pdf>

² Available here: <https://cds.bromley.gov.uk/documents/s50083418/PLANNING%20LEGISLATION%20UPDATE%20-%20PERMITTED%20DEVELOPMENT%20RIGHTS%20AND%20CHANGES%20TO%20THE%20USE%20CLASSES%20ORDERP.pdf>

address should be clearly identified. For the Directions proposed in this report, justification is set out in the following sections.

- 3.5 Provided that the local authority considers it expedient, an Article 4 Direction can cover an area of any geographic size, from a specific site to a local authority-wide area. PPG advises that any Direction removing PD rights where prior approval powers are available to control PD should have particularly strong justification.
- 3.6 Article 4 Directions can be made with immediate effect or to take effect following a period of notice to remove compensation liability (non-immediate). This report recommends that the Council issues 21 non-immediate Article 4 Directions with a 12-month notice period, in order to reduce the Council's liability to compensate landowners affected by the removal of PD rights. This is discussed further in the legal implications of this report.
- 3.7 Prior to coming into force, the Council must confirm whether it intends to proceed with the Directions, based on consideration of representations received. The decision on whether to confirm will be taken by the Portfolio Holder for Renewal, Recreation and Housing.
- 3.8 During the 12-month notice period, the PD rights would continue to apply. If the Directions are confirmed, following this notice period any upwards extensions within the areas covered by the Directions would require full planning permission.
- 3.9 The Secretary of State for Housing, Communities and Local Government has the power to revoke or modify Article 4 Directions at any time.
- 3.10 There is a range of national, London and local planning policies that are considered material to any decision of whether it is expedient to make an Article 4 Direction.
- 3.11 The NPPF is underpinned by three overarching objectives, relating to the economic, social and environmental pillars of sustainable development; the social objective refers to the need to foster a well-designed and safe built environment. Paragraph 9 of the NPPF states that: "Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area."
- 3.12 Paragraph 118(e) sets out a policy approach to encourage upwards extensions, which predates the introduction of the upwards extension PD rights. It is notable, however, that the policy approach set out in the NPPF refers explicitly to compliance with local design policies and standards, reflecting the importance that such policies have in terms of guiding suitable development in keeping with local character.
- 3.13 Section 12 of the NPPF sets out national planning policy for achieving well-designed places. Paragraph 124 sums up the importance of good design: "The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities."
- 3.14 Paragraph 127 sets out criteria that should be addressed in planning policies and decisions to ensure development is well designed. This criteria includes ensuring that developments:
 - a) *will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;*
 - b) *are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;*

- c) *are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);*
- d) *establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;*
- e) *optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and*
- f) *create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.*

3.15 Further guidance is set out in the PPG. The PPG highlights the importance of effective and early engagement with local communities and the local planning authority, to ensure good design is achieved. It states that “planning policies can set out the design outcomes that development should pursue as well as the tools and processes that are expected to be used to embed good design.”³

3.16 The PPG is also clear that “[a] plan’s vision and objectives can be used to set out the types of place(s) which the plan aims to achieve, how this will contribute to the sustainable development of the area and how this translates into the expectations for development and investment, including design.”⁴

3.17 The PPG should be read alongside the National Design Guide⁵. Good design is set out in the National Design Guide under 10 characteristics, including:

- Context - the location of the development and the attributes of its immediate, local and regional surroundings. Well-designed places are based on a sound understanding of the features of the site and the surrounding context, using baseline studies as a starting point for design; integrated into their surroundings so they relate well to them; influenced by and influence their context positively; and responsive to local history, culture and heritage.
- Identity – The identity or character of a place comes from the way that buildings, streets and spaces, landscape and infrastructure combine together and how people experience them. It is not just about the buildings or how a place looks, but how it engages with all of the senses. Local character makes places distinctive. Well-designed, sustainable places with a strong identity give their users, occupiers and owners a sense of pride, helping to create and sustain communities and neighbourhoods.
- Built form – the three-dimensional pattern or arrangement of development blocks, streets, buildings and open spaces. It is the interrelationship between all these elements that creates an attractive place to live, work and visit, rather than their individual characteristics. Together they create the built environment and contribute to its character and sense of place.
- Homes and buildings - well-designed homes and buildings are functional, accessible and sustainable. They provide internal environments and associated external spaces that support the health and wellbeing of their users and all who experience them. Successful buildings also provide attractive, stimulating and positive places for all, whether for activity, interaction, retreat, or simply passing by.

³ Paragraph: 002 Reference ID: 26-002-20191001, available here: <https://www.gov.uk/guidance/design>

⁴ Paragraph: 003 Reference ID: 26-003-20191001, available here: <https://www.gov.uk/guidance/design>

⁵ Available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/843468/National_Design_Guide.pdf

- 3.18 Looking forward, the ‘Planning for the Future’ white paper⁶ sets out potential reforms of the planning system to streamline and modernise the planning process, including a strong focus on design. While the white paper is not yet relevant material consideration relating to the justification of an Article 4 Direction, it is useful context to understand the Governments likely approach to design issues in the planning system. Pillar two of the white paper - Planning for beautiful and sustainable places – states that: “planning should be a powerful tool for creating visions of how places can be, engaging communities in that process and fostering high quality development: not just beautiful buildings, but the gardens, parks and other green spaces in between, as well as the facilities which are essential for building a real sense of community.”
- 3.19 The white paper also cites the Building Better, Building Beautiful Commission report, noting that it found that “[t]oo many places built during recent decades fail to reflect what is special about their local area or create a high quality environment of which local people can be proud.”
- 3.20 At the London level, the new draft London Plan policy D3 sets out a design-led approach which requires consideration of design options to determine the most appropriate form of development that responds to a site’s context and capacity for growth. Development proposals should, inter alia:
- enhance local context by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance and shape, with due regard to existing and emerging street hierarchy, building types, forms and proportions; and
 - respond to the existing character of a place by identifying the special and valued features and characteristics that are unique to the locality and respect, enhance and utilise the heritage assets and architectural features that contribute towards the local character.
- 3.21 Local planning policy set out in the Bromley Local Plan. One of the Local Plan’s key objectives relates to design and the public realm; it aims to ensure that new development of all kinds is well designed, safe, energy efficient and complements its surroundings, respecting the existing scale and layout.
- 3.22 Several Local Plan policies relating to housing development, including residential extensions, require development to be consistent with local character. Policies 41, 42 and 44 relate to areas within and adjacent to conservation areas; and identified Areas of Special Residential Character (ASRCs), all of which are (or are adjacent to) areas with special character and appearance. With regard to the ASRCs, these are important local designations where new development is required to respect, enhance and strengthen their special and distinctive qualities. Appendix 10.6 of the Local Plan gives detailed descriptions of designated ASRCs, detailing what makes them special and distinctive.
- 3.23 Policy 48 of the Local Plan requires developments which may impact on the skyline to demonstrate how they will protect or enhance the quality of the views, vistas, gaps and skyline. This includes 10 views of local importance, five landmarks and two major skyline ridges.

Proposed Article 4 Directions – justification and evidence

- 3.24 This section of the report sets out areas which have been considered for potential Article 4 Directions to remove upwards extension PD rights, setting out an assessment of the merits for these areas and whether or not they are considered to justify the making of an Article 4 Direction(s). The areas considered are those which relate to Local Plan policy areas which

⁶ Available here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907956/Planning_for_the_Future_web_accessible_version.pdf

could be adversely affected by the PD rights; and areas put forward for consideration by members.

Areas of Special Residential Character

3.25 As noted above, ASRCs are a designation in the adopted Local Plan. They have been justified based on their special and distinctive qualities and were recently found sound by an independent planning inspector as part of the Local Plan examination. There are 13 ASRCs across the Borough, comprising 421 hectares of land (less than 3% of the total area of the Borough). There are over 4,000 properties in total within the ASRCs.

3.26 Two background papers⁷ prepared in support of the ASRC policy ahead of the Local Plan examination provide further clear evidence of the value of the ASRCs.

3.27 Both the Local Plan policy and the detailed supporting evidence highlight the importance of the ASRCs to the character of the Borough. All ASRCs have been assessed against the following criteria and found to warrant designation:

- There should be a sufficient number of properties to form an area of distinctive character. The areas should be well established, readily identifiable and coherent,
- The majority of properties should have the same readily identifiable characteristics (e.g. spatial standards, similar materials, well landscaped frontages),
- The boundary should be easily defined and defensible; and
- The areas defined should be primarily residential in character.

3.28 The ASRCs provide significant benefits in terms of local amenity by ensuring that the distinctive character and high-quality environments of the areas are maintained. The new PD rights have the potential to significantly affect the ASRCs, undermining their distinctive characteristics and adversely impacting local amenity. These potential impacts are considered to justify the making of Article 4 Directions to remove the new PD rights in the ASRCs.

Local views and landmarks

3.29 As noted above, Local Plan policy 48 identifies 10 views of local importance, five landmarks and two major skyline ridges. Development which may impact on these views must demonstrate how it will protect or enhance the view quality. The PD rights have significant potential for impacting on designated views; the views reinforce a sense of place and add significant amenity value in their localities, and the PD rights could harm this local amenity. The addition of extra storeys can block or obscure views; or introduce an obtrusive element which detracts from the overall quality of the view; this is particularly the case where PD rights may be utilised in the foreground of a view.

3.30 Officers have assessed all 10 views of local importance, five landmarks and two major skyline ridges, to determine whether the PD rights could adversely affect the view designations; this assessment was based on the following methodology:

- Site visit or virtual site visit to determine scope of the view and potential impacts.
- Assessment of areas which may affect the views, particularly in the foreground. This includes checking the extent of conservation areas and using historic maps to determine the extent of

⁷ Local Plan Background Paper - Potential Areas of Special Residential Character Spatial Character Assessments (September 2015), available from: https://www.bromley.gov.uk/download/downloads/id/3088/sd52_potential_asrcs_-_spatial_character_assessments_2015.pdf; and Local Plan Background Paper - Proposed North Copers Cope Road and The Knoll Areas of Special Residential Character Spatial Character Assessments (November 2016), available from: https://www.bromley.gov.uk/download/downloads/id/3089/sd53_north_copers_cope_rd_and_the_knoll_asrcs_-_character_assessments_2016.pdf

pre-1948 properties in the area, which would prevent use of the PD rights and mean that impacts would not materialise. It also includes a rough assessment of building typologies within the view, as different types of building allow different maximum heights.

- 3.31 Of the 10 local views, only one was considered to justify an Article 4 Direction, the view of Croydon town centre from Village Way, Beckenham. This view is a street-level view looking down Crossways Road from the junction of Village Way and Stone Park Avenue. An Article 4 Direction is proposed covering properties at 154-156 Village Way, and 9-23 and 16-28 Crossways Road. Upwards extensions on these properties could potentially impinge on the local view, including the periphery of the view.
- 3.32 Of the five landmarks, only one was considered to justify an Article 4 Direction, the view of St. Edmund of Canterbury RC Church on Village Way, Beckenham. Looking north along Village Way, the landmark becomes visible near the junction with Bramerton Road, but because of the topography and street layout, the view is not likely to be obscured until further north. An Article 4 Direction is proposed covering properties at 24-84 Village Way, as upwards extensions on these properties could obscure views of the landmark at various points along Village Way.
- 3.33 Of the two skyline ridges, neither is considered to justify an Article 4 Direction, largely because a lot of the foreground of the views fall within areas where the use of the PD rights is precluded (e.g. conservation area, SSSI).

Local green space

- 3.34 Policy 56 of the Local Plan identifies a number of local green spaces. These are green areas or open spaces which have been demonstrated to have particular value and significance to the local community which they serve because of special qualities set out in their Statement of Significance (provided at appendix 10.8 of the Local Plan). Views are one component of the rationale for these spaces; some of the Statements of Significance refer to views from the local green space.
- 3.35 Officer assessment of views from all relevant spaces suggests that none of the views would be impacted by the PD rights. Upwards extensions could be visible in some of the views, but this would not be within the foreground and would therefore be unlikely to cause harm to the 'special qualities' of the local green spaces, which Local Plan policy 56 seeks to resist. Taking this into account, it is considered that the potential impacts are limited and would not justify an Article 4 Direction.

Agricultural buildings

- 3.36 Agricultural buildings are those used for agriculture purposes, agriculture being defined as per section 336 of the Town and Country Planning Act 1990. There are existing and longstanding PD rights which allow the change of use of agricultural buildings to residential (Part 3, Class Q of the GPDO), commercial (Part 3, Class R of the GPDO) or education use (Part 3, Class S of the GPDO), although there are restrictions and a requirement to seek prior approval of certain issues. The new upwards extension PD rights do not apply directly to agricultural buildings. In the case of former agricultural buildings converted to residential:
- Part 1 Class AA and Part 20 Class A PD rights are not permitted if the residential use was granted through Part 3 Class Q PD rights.
 - Part 20 Class AA, AB and AC PD rights do not apply to buildings which were not in C3 use/mixed use as of 5 March 2018; therefore, it would not now be possible to use agricultural PD rights to convert to residential/commercial use and then subsequently use PD rights for upwards extensions. The upwards extension PD rights could only be used on any converted agricultural buildings which were occupied for C3 use on or before 5 March 2018; a search of

previous planning applications for the conversion of agricultural buildings shows a very limited number of conversions to residential or commercial use in recent years. Also, Class AB and AC PD rights relate to terraced buildings; converted agricultural buildings would be unlikely to meet the definition of 'terrace building' set out in the GPDO.

- 3.37 Taking into account these issues, plus the fact that the PD rights themselves have a number of other restrictions which may preclude use of PD rights to convert agricultural buildings, it is considered that the potential impacts are limited and would not justify an Article 4 Direction.

Green Belt

- 3.38 Over half of Bromley is covered by the Green Belt. Local Plan policy 49 reflects the NPPF with fundamental aim to prevent urban sprawl by keeping land permanently open and ensuring that the essential characteristics of openness and their permanence are ensured. The policy identifies types of development that are appropriate within the Green Belt, which includes extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt; this includes the re-use of buildings provided that the buildings are of permanent and substantial construction.

- 3.39 In principle, the upwards extension PD rights are not considered inherently harmful to the Green Belt, particularly in terms of harm to local amenity and wellbeing that would need to be justified to support the making of an Article 4 Direction. If there was a strong likelihood that the upwards extension PD rights would cause adverse impacts, it can reasonably be assumed that this would have led to restrictions set out in the GPDO or specific prior approval test. As it stands, there is no restriction or prior approval test related to openness.

- 3.40 It is important to note that some of the GPDO restrictions would cover large parts of the Green Belt.

- 3.41 Taking into account these issues, it is considered that an Article 4 Direction covering the Green Belt would not be justified.

Bungalows

- 3.42 At the meeting of Development Control Committee on 24 September 2020, members requested investigation into a possible Article 4 Direction to protect bungalows from upwards extension, as this type of accommodation was much sought after by the older population and those people wishing to downsize their property in later life.

- 3.43 Officers have considered the potential for such a Direction. It is noted that there is no information on the extent of bungalows across the Borough. Regardless, it is unlikely that many bungalows would be restricted for use by older people, therefore many cannot be guaranteed as a supply of older persons accommodation, given that people of any age could live in them. Therefore, there is no strong justification for an Article 4 Direction on the grounds that it provides a supply of older persons accommodation.

- 3.44 In terms of other impacts, it is noted that one-storey buildings can only extend upwards by one storey, which may limit any impacts to a degree.

- 3.45 Taking these factors into account, it is considered that there is no justification for an Article 4 Direction specifically removing PD rights from bungalows.

Town centres

- 3.46 The Local Plan has a number of policies relating to Town Centres; one of the key aims of these policies is to ensure that the retail and commercial character of these areas is maintained. Residential uses in close proximity to commercial uses can affect their future commercial operation, for example by restricting the ability of certain types of businesses to operate due to concerns about noise and amenity impacts.
- 3.47 The upwards extension PD rights have the potential to introduce a significant number of residential units into town centres. It is noted there are specific prior approval categories which allow assessment of the impacts of noise from any commercial premises on the intended occupiers of the new dwellinghouses; and the impacts of the introduction of, or an increase in, a residential use of premises in the area on the carrying on of any trade, business or other use of land in the area. The PD rights will also not result in the loss of existing premises, unlike the office to residential demolition PD rights which result in wholesale loss of commercial premises.
- 3.48 Taking into account these issues, it is considered that an Article 4 Direction covering town centres would not be justified.

4. POLICY IMPLICATIONS

- 4.1 As set out in the main body of this report, there could be significant adverse impacts on local amenity resulting from upwards extensions in specific areas linked to Local Plan designations, if the proposed Article 4 Directions are not put in place. This could undermine elements of the Development Plan.
- 4.2 The proposed Directions will restrict housing supply to a degree, but this is likely to be of limited impact in terms of restricting the amount of new residential units created, and hence the effect on the Council's ability to meet housing targets is limited. The areas subject to the Directions cover a very small proportion of the total area of the borough, which leaves a significant amount of land where PD rights would continue to apply. The potentially significant impacts on local amenity, identified in this report, would outweigh this potentially limited impact on housing supply, in terms of the deciding whether it is expedient to pursue Article 4 Directions in the areas proposed.
- 4.3 The quality of the housing created must also be considered alongside any impact on housing supply. The creation of new housing is not just a numbers game; it is essential that new housing is fit for purpose in order to ensure sustainable development, for example ensuring appropriate sustainable design measures to mitigate climate change. PD rights have become synonymous with poor quality, small homes. As Article 4 Directions would require planning permission to be secured for such developments in the future, this will ensure delivery of higher quality residential units and assist with the delivery of sustainable development in the borough. It is recognised that the Government have indicated that minimum space standards will be required for new housing developed through PD rights, but, important as these standards are, this will not guarantee the development of high quality housing; only full application of Development Plan policy can do this.
- 4.4 Prior approval permissions have often been used as a 'fallback' position, whereby developers secure prior approval permission and then subsequently apply for full planning permission for a more comprehensive development on the same site, noting that if this permission was not granted then there is an extant prior approval that can be delivered. Fallback positions can be material considerations in the determination of planning applications although the weight given would depend on whether the applicant has secured the prior approval permission; it is not enough to just highlight that prior approval permission could be sought, as there is no guarantee prior approval will be granted. Where prior approval permission has been granted, an applicant

would also need to demonstrate that there is a realistic intention to implement the prior approval, for the fallback to be given weight. It is noted that development granted through the upwards extension PD rights must be completed within three years of the date of grant of prior approval, which will factor into any consideration of the weight given to a fallback position.

- 4.5 The impacts of the COVID-19 pandemic are currently uncertain, but it is noted that it could have significant impacts on housing supply in particular. However, such impacts are not yet evident, for example through higher commercial vacancies or impacts on housing delivery statistics. If impacts do materialise, this does not necessarily have implications for the Directions, as these impacts could be a material consideration in a future planning application. However, the PPG notes that it is important for local planning authorities to monitor any Article 4 Directions regularly to make certain that the original reasons the Directions were made remain valid. Therefore, the impact of the COVID-19 pandemic, as well as other positive and negative impacts, will be an ongoing consideration to help determine whether the Directions should remain in place.

5. FINANCIAL IMPLICATIONS

- 5.1 This report recommends 15 non-immediate Article 4 Directions which will ensure that compensation liability is removed. This requires a 12-month notice period to be given, before the Directions come into effect. During this period, the PD rights would continue to apply, and landowners might take advantage of these rights. However, if the Council were to remove these rights with immediate effect, any refusal of planning permission could result in compensation liability. Compensation can be claimed based on abortive expenditure or other loss or damage directly attributable to the withdrawal of PD rights; this could include differences in land value between an existing and extended property, which could be substantial.
- 5.2 Costs associated with publishing and consulting on the Article 4 Directions will be met by Planning Policy and Strategy and the Council's legal services department.

6. LEGAL IMPLICATIONS

- 6.1 Article 4 (1) of the GPDO allows local Planning authorities to withdraw certain PD Rights. The procedure for putting in place an Article 4 Direction is set out in Schedule 3 of the GPDO. The Council's legal services department will be responsible for making and publicising the Directions, in line with the statutory requirements set out in the GPDO. This includes a period of at least 3 weeks to allow for representations to be made on the proposed Directions; it is the intention to consult on the proposed Directions for 6 weeks to allow ample time for interested parties to respond. Any representations received must be taken into account before making any decision whether to confirm the Directions.
- 6.2 There is also a requirement for serving notice on owners and occupiers of every part of land within the areas to which the Directions relate, unless the local planning authority considers that the number of owners or occupiers within the area to which the direction relates makes individual service impracticable. The proposed Directions together encompass around 4,500 properties (which includes instances where there are numerous properties within a single building). This level of notification is considered to be impracticable, hence individual notice will not be given. Notice will be given by local advertisement and site notice, as per the other requirements of the GPDO.
- 6.3 The GPDO requires notice of the proposed Directions to be given as soon as practicable. Due to the current COVID-19 restrictions, it may not be practicable to give notice as per the GPDO requirements. In such instances, the Council will seek to issue notice following the lifting of the

COVID-19 restrictions. This is considered to be a practical and pragmatic approach as advocated in the Chief Planners Letter of 20 March 2020⁸.

<p>Non-Applicable Sections:</p>	<p>IMPACT ON VULNERABLE ADULTS AND CHILDREN</p> <p>PERSONNEL IMPLICATIONS</p> <p>PROCUREMENT IMPLICATIONS</p>
<p>Background Documents: (Access via Contact Officer)</p>	<p>The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 - https://www.legislation.gov.uk/ukxi/2020/632/regulation/22/made</p> <p>The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 - https://www.legislation.gov.uk/ukxi/2020/755/contents/made</p> <p>The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 3) Order 2020 - https://www.legislation.gov.uk/ukxi/2020/756/contents/made</p> <p>Development Control Committee report, 14 July 2020, Upwards Extension Permitted Development Rights - https://cds.bromley.gov.uk/documents/s50082500/UPWARDS%20EXTENSION%20PERMITTED%20DEVELOPMENT%20RIGHTSPART%201%20REPORT%20TEMPLATE.pdf</p> <p>Development Control Committee report, 24 September 2020, PLANNING LEGISLATION UPDATE – PERMITTED DEVELOPMENT RIGHTS AND CHANGES TO THE USE CLASSES ORDER - https://cds.bromley.gov.uk/documents/s50083418/PLANNING%20LEGISLATION%20UPDATE%20-%20PERMITTED%20DEVELOPMENT%20RIGHTS%20AND%20CHANGES%20TO%20THE%20USE%20CLASSES%20ORDERP.pdf</p>

⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875045/Chief_Planners_Newsletter_-_March_2020.pdf